

WILLIAM A. MUNDELL
CHAIRMAN

OPEN MEETING



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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DATE: JUNE 12, 2002

DOCKET NO: T-04097A-02-0236

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Order on:

ACCXX COMMUNICATIONS, LLC
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 12:00 p.m. on or before:

JUNE 21, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 25, 2002 and JUNE 26, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 WILLIAM A. MUNDELL
4 CHAIRMAN
5 JIM IRVIN
6 COMMISSIONER
7 MARC SPITZER
8 COMMISSIONER

9 IN THE MATTER OF THE APPLICATION OF
10 ACCXX COMMUNICATIONS, LLC FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE COMPETITIVE
13 RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICES, EXCEPT
15 LOCAL EXCHANGE SERVICES

DOCKET NO. T-04097A-02-0236

DECISION NO. _____

ORDER

16 Open Meeting
17 June 25 and 26, 2002
18 Phoenix, Arizona

19 **BY THE COMMISSION:**

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. On March 27, 2002, ACCXX Communications, LLC ("Applicant" or "ACCXX")
24 filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of
25 Convenience and Necessity ("Certificate") to provide competitive resold interexchange
26 telecommunications services, except local exchange services, within the State of Arizona.

27 2. Applicant is a switchless reseller that purchases telecommunications services from a
28 variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
of the Commission.

4. ACCXX has authority to transact business in the State of Arizona.

5. ACCXX failed to file an Affidavit of Publication indicating compliance with the
Commission's notice requirements.

1 6. On April 22, 2002, the Commission's Utilities Division Staff ("Staff") filed a Staff
2 Report which includes Staff's fair value rate base determination and recommends approval of the
3 application subject to certain conditions.

4 7. In its report, Staff indicated that Applicant had not published public notice as required
5 by the Commission. Subsequently, Staff notified ACCXX to address this deficiency.

6 8. On May 29, 2002, Applicant filed an Affidavit of Publication indicating compliance
7 with the Commission's notice requirement.

8 9. On May 31, 2002, Staff filed an Amended Staff Report which confirmed that
9 Applicant had cured the deficiency with respect to notice and recommended approval of ACCXX's
10 application subject to certain conditions set forth hereinafter.

11 10. In the Staff Report, Staff stated that ACCXX provided financial statements for the
12 year ending December 31, 2001, which list assets of \$732,132, total equity of \$106,797, and a net
13 income of \$775.

14 11. In its Staff Report, Staff stated that based on information obtained from the applicants,
15 it has determined that ACCXX's fair value rate base is zero, and is too small to be useful in setting
16 rates. Staff further stated that in general, rates for competitive services are not set according to rate of
17 return regulation, but are heavily influenced by the market. Staff recommended that the Commission
18 not set rates for ACCXX based on the fair value of its rate base.

19 12. Staff believes that ACCXX has no market power and that the reasonableness of its
20 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
21 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
22 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
23 Commission approve them.

24 13. Staff recommended approval of ACCXX's application subject to the following:

25 (a) The Applicant should be ordered to comply with all Commission rules, orders,
26 and other requirements relevant to the provision of intrastate telecommunications
27 service;

28 (b) The Applicant should be ordered to maintain its accounts and records as

required by the Commission;

(c) The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;

(d) The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

(f) The Applicant should be ordered to cooperate with Commission investigations of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;

(h) The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;

(i) If at some future date, the Applicant wants to collect from its customers an advance, deposit, and/or prepayment, it must file information with the Commission for Staff review. Upon receipt of such filing and after Staff review, Staff would forward its recommendation to the Commission;

(j) The Applicant's interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;

(k) The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and

(l) In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate.

14. Staff further recommended that ACCXX's Certificate should be conditioned upon the Applicant filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever comes first.

15. Staff recommended that if the Applicant fails to meet the timeframes or condition outlined in Findings of Fact. No. 14 above, that ACCXX's Certificate should become null and void without further Order of the Commission, and that no time extensions for compliance should be

1 granted.

2 16. The rates proposed by this filing are for competitive services.

3 17. Staff's recommendations as set forth herein are reasonable.

4 18. ACCXX's fair value rate base is zero.

5 **CONCLUSIONS OF LAW**

6 1. Applicant is a public service corporation within the meaning of Article XV of the Arizona
7 Constitution and A.R.S. §§ 40-281 and 40-282.

8 2. The Commission has jurisdiction over Applicant and the subject matter of the
9 application.

10 3. Notice of the application was given in accordance with the law.

11 4. Applicant's provision of resold interexchange telecommunications services is in the
12 public interest.

13 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for
14 providing competitive resold interexchange telecommunications services in Arizona.

15 6. Staff's recommendations in Findings of Fact Nos. 11, 12, 13, 14 and 15 should be
16 adopted.

17 7. ACCXX's fair value rate base is not useful in determining just and reasonable rates for
18 the competitive services it proposes to provide to Arizona customers.

19 8. ACCXX's rates, as they appear in its proposed tariffs, are just and reasonable and
20 should be approved.

21 **ORDER**

22 IT IS THEREFORE ORDERED that the application of ACCXX Communications, L.L.C. for
23 a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange
24 telecommunications services, except local exchange services, is hereby granted, conditioned upon its
25 compliance with the conditions recommended by Staff as set forth in Findings of Fact Nos. 13 and 14
26 above.

27 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
28 11, 12, 13, 14 and 15 above are hereby adopted.

1 IT IS FURTHER ORDERED that ACCXX Communications, L.L.C. shall comply with the
2 adopted Staff recommendations as set forth in Findings of Fact Nos. 13 and 14 above.

3 IT IS FURTHER ORDERED that if ACCXX Communications, L.L.C. fails to meet the
4 timeframes outlined in Findings of Fact. No. 14 above, that the Certificate conditionally granted
5 herein shall become null and void without further Order of the Commission.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2002.

16 BRIAN C. McNEIL
EXECUTIVE SECRETARY

17 DISSENT
18 MES:dap

1 SERVICE LIST FOR: ACCXX COMMUNICATIONS, LLC

2 DOCKET NO.: T-04097A-02-0236

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4 Lance J.M. Steinhart, PC
Attorney at Law
6455 E. Johns Crossing, Suite 285
5 Duluth, Georgia 30097
Attorneys for ACCXX Communications, LLC

6

7 Christopher Kempley, Chief Counsel
Legal Division
8 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
9 Phoenix, Arizona 85007

10 Ernest G. Johnson, Director
Utilities Division
11 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
12 Phoenix, Arizona 85007

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